Supreme Court, U. S.
FILED
JUL 24 1980
MICHAEL RODAK, JR., CLERK

No. 79-2039

Supreme Court of the United States

October Term, 1980

VICTOR CASASSA,

Petitioner,

against

THE STATE OF NEW YORK,

Respondent.

On Petition for Writ of Certiorari to the New York State Court of Appeals

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

DENIS DILLON
District Attorney, Nassau County
Attorney for Respondent
262 Old Country Road
Mineola, New York 11501
(516) 535-4800

ANTHONY J. GIRESE
JUDITH R. STERNBERG
Assistant District Attorneys
Of Counsel

Question Presented

Whether the United States Constitution bars questioning of a 27-year-old man who voluntarily accompanies the police to the stationhouse and waives his constitutional rights.

TABLE OF CONTENTS

	PAGE
Question Presented	1
Preliminary Statement	1
Jurisdiction	2
The Opinions Below	2
Statement of the Case	2
Argument	
There was absolutely no constitutional impediment to the reception of petitioner's confession into evidence at trial	4
Conclusion	9

TABLE OF AUTHORITIES

PAGE

Cases:

Clark v. United States, 400 F.2d 83 (9th Cir. 1968), *cert. denied*, 393 U.S. 1036 (1969) 5

Fikes v. Alabama, 352 U.S. 191 (1957) 7, 8

Haynes v. Washington, 373 U.S. 503 (1963) 8

Lynumn v. Illinois, 372 U.S. 528 (1963) 8

Miranda v. Arizona, 384 U.S. 436 (1966) 5

Oregon v. Mathiason, 429 U.S. 492 (1977) 5

People v. Anderson, 42 N.Y.2d 35 (1977) 7

People v. Casassa, 66 A.D.2d 1032 (2d Dept. 1978), *aff'd*, 49 N.Y.2d 668 (1980) 7

United States v. Cortez, 425 F.2d 450 (1st Cir. 1970) 5

Other Authorities:

28 U.S.C. §1257(3) 2

New York State Penal Law §125.25 1

Supreme Court of the United States

October Term, 1980

No. 79-2039

VICTOR CASASSA,

Petitioner,

against

THE STATE OF NEW YORK,

Respondent.

On Petition for Writ of Certiorari to the New York State Court of Appeals

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

Preliminary Statement

Pursuant to a judgment of the County Court, Nassau County, New York, rendered December 1, 1977, Victor Casassa was convicted, after trial, of murder in the second degree (New York State Penal Law §125.25), and was sentenced to an indeterminate term of imprisonment of from fifteen years to life. On December 26, 1978, the judgment

was unanimously affirmed by order of the New York State Supreme Court, Appellate Division, Second Department. The Appellate Division's order was unanimously affirmed by the New York State Court of Appeals in an order dated April 1, 1980. Petitioner now seeks certiorari to review the order of the Court of Appeals.

Jurisdiction

The petition for certiorari was filed June 25, 1980. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257 (3).

The Opinions Below

The opinion of the Court of Appeals appears at 49 N.Y. 2d 668 and is reproduced in the petition for certiorari at pages 1a to 15a. The order of the Appellate Division, which affirmed the conviction without opinion, appears at 66 A.D. 2d 1032 and is reproduced at page 16a of the petition.

Statement of the Case

On March 1, 1977, Victoria Loconsolo's nude body was found in the bathtub of her apartment. She had been stabbed fourteen times in the neck and chest. Victor

Casassa subsequently confessed to and was convicted of Miss Loconsolo's brutal killing. One of the issues which Casassa raised before trial and in the New York State appellate courts was the voluntariness of his confession. That is the sole issue raised in the petition for certiorari.

The circumstances surrounding Casassa's confession were established at a pre-trial hearing. Those circumstances were summarized by the New York State Court of Appeals as follows:

> "On the evening of March 1, 1977 [the day following the killing], Nassau County Police detectives came to the apartment building in which the crime had occurred. They were in the process of questioning several of the residents of the building when defendant presented himself to the police and volunteered that he had been in the victim's apartment on the night of the murder. While denying any involvement in the murder of Miss Loconsolo, he professed a willingness to cooperate in the investigation.
>
> The police accepted his offer of cooperation and requested that he accompany them to the Nassau County police headquarters in Mineola to discuss the matter further. On the way to Mineola, defendant was informed of his constitutional rights. He indicated that he understood his rights and that he nonetheless wished to cooperate. Defendant was interrogated by police for some nine and one-half hours thereafter and at 5:00 A.M. on the morning of March 2, 1977, he fully confessed to the murder of Victoria Loconsolo, giving the police several oral and written statements detailing his involvement in the crime."

ARGUMENT

There was absolutely no constitutional impediment to the reception of petitioner's confession into evidence at trial.

Victor Casassa petitions this Court for a writ of certiorari, contending that the circumstances surrounding his extra-judicial confession rendered it involuntary and inadmissible at trial. Because it was not supported by the evidence, that contention was rejected by the trial court, the Appellate Division of the New York State Supreme Court, and the New York State Court of Appeals. It is not now an appropriate issue for certiorari review.

Victor Casassa and Victoria Loconsolo lived in the same apartment building and became friendly. To Casassa, however, the relationship was more than a friendship. He believed himself to be in love with Miss Loconsolo and he refused to accept the fact that she did not love him. Finally, on February 28, 1977, Casassa fortified himself with a shot of scotch, put a knife in his pocket, and went to Miss Loconsolo's apartment. There, he stabbed her fourteen times in the throat and neck. He then dragged the body to the bathroom, put it in the bathtub and filled the tub with water in order "to make sure she was dead." He tried to clean the pool of blood from the living room floor and he disposed of the robe Miss Loconsolo had worn and the knife he had used.

The next day, at about 7 p.m., police officers were in the apartment of the building's superintendent, speaking to residents of the building about the murder. Casassa walked

into the apartment, presented himself to the police, and volunteered that he had been with Miss Loconsolo in her apartment for about fifteen minutes on the night of her death. Casassa and the officers spoke, first in the superintendent's apartment and then, because that apartment was crowded, next door in Casassa's own apartment. The police eventually asked Casassa whether he would be willing to accompany them to headquarters to discuss the matter further. Casassa agreed.

On the way to the stationhouse, Casassa was informed of his constitutional rights in the form required by *Miranda* v. *Arizona,* 384 U.S. 436 (1966). Casassa was simply a witness at that point; he had accompanied the police voluntarily and was not "in custody." Thus, the police were not required to advise him of his constitutional rights. *Oregon* v. *Mathiason,* 429 U.S. 492, 495 (1977); *United States* v. *Cortez,* 425 F.2d 450, 457 (1st Cir. 1970); *Clark* v. *United States,* 400 F. 2d 83, 84 (9th Cir. 1968), *cert. denied,* 393 U.S. 1036 (1969). Nonetheless, the warnings were given, evidencing, if anything, an overly-cautious approach by the police to Casassa's constitutionally-protected rights. Casassa's reaction to these warnings, after acknowledging that he understood them, was to maintain his facade as the concerned friend of the victim and to restate his wish to cooperate. He told the officers, "I want to cooperate. I want to find out who did this."

Casassa and the detectives arrived at police headquarters at about 7:45 p.m. and went to the homicide squad office. The two detectives became involved in a series of telephone calls and so, for about an hour, Casassa sat in

the room with them but was not questioned. While he was sitting there, Casassa was offered coffee. Finally, the two detectives and Casassa spoke, discussing Casassa's activities on the night of and morning after the killing. A third detective eventually came into the squad room and listened to the conversation. At about midnight, other people were entering the squad room and the officers and Casassa therefore moved to the supervisor's room. There, one of the detectives inquired further into the relationship between Casassa and Victoria Loconsolo and asked Casassa whether he would be willing to take a polygraph test. Casassa agreed, again telling the officers of his desire to cooperate and to help them solve the case. At that time, about 1:30 a.m., a call was made for a polygraph operator. The operator arrived at headquarters at 2 or 2:30 a.m. and arrangements were made for the test. At about 2:55 a.m., Casassa was taken to the polygraph room. From the time the detective called for the polygraph operator until Casassa was taken to the test room, he was not questioned about the killing.

At 3:05 a.m., after being informed by the polygraph operator that he was not required to take the test, Casassa signed a consent form, which contained a recitation of his pre-interrogation rights, and the test was begun. At about 4 a.m., the test was aborted because "the subject was moving around too much."

For approximately one hour thereafter, two of the detectives spoke to Casassa in the polygraph room. At the end of that hour, at 5 a.m., Casassa admitted killing Victoria Loconsolo.

It is clear from this record that the hearing court properly refused to suppress Casassa's statement. An examination of the "totality of the circumstances" [*Fikes* v. *Alabama,* 352 U.S. 191, 197 (1957); *People* v. *Anderson,* 42 N.Y.2d 35, 38 (1977)] reveals that the confession was made voluntarily and that petitioner's argument is without merit.

For instance, petitioner's contention that he was "the subject of an all-night interrogation conducted by numerous armed detectives and police officers" (petition at 5) is simply not supported by the record. Casassa was not questioned for the first hour during which he was at headquarters. He was then questioned for about four hours and 45 minutes. Next, there was a significant interval of about an hour and a half without questioning, followed by about an hour during which the polygraph operator attempted to administer the test. Casassa was then questioned for one hour and he confessed. Moreover, the stationhouse questioning was conducted initially by two of the three detectives whom Casassa had met at his apartment house. The only other officer who questioned Casassa (excluding the officer who administered the polygraph test), was the third detective to whom Casassa had spoken at the apartment.

Similarly, there is no merit to petitioner's charge that he was "cut off from family and friends" (petition at 5). As stated by the New York Court of Appeals [*People* v. *Casassa,* 49 N.Y.2d 668, 682 (1980)]: "It is clear from the record that the defendant, a man of 27 years, consciously chose to confront his interrogators alone. Indeed, it is undisputed that defendant, after being informed of his constitutional rights, did not even ask to speak with either counsel

or any member of his family." *Compare Haynes* v. *Washington,* 373 U.S. 503 (1963) (incommunicado detention).

Additionally, Casassa should not now complain that he had no food or sleep while he was at headquarters (petition at 5). Casassa was offered coffee upon his arrival and he drank coffee throughout the night; he was offered food but refused it; he never then complained of a lack of sleep.

Finally, petitioner contends that "his impaired mental condition severely crippled his capacity for self-determination" (petition at 5). No testimony relevant to petitioner's mental state was presented at the pre-trial hearing on the motion to suppress. *See and compare Lynumn* v. *Illinois,* 372 U.S. 528, 535-36 (1963). Moreover, even if the psychiatric testimony later presented at trial had been timely presented at the hearing, it would not have required suppression of the statements. The expert testimony bore on Casassa's psychiatric history and his extreme emotional disturbance (or lack thereof) at the time he killed Victoria Loconsolo. There was no evidence that even implied that Casassa was highly suggestible or easily intimidated. *Compare Fikes* v. *Alabama, supra* at 193. To the contrary, the psychiatric report written by the defendant's own expert witness said that Casassa spoke in a "well-organized, chronological manner," and that "nothing can dissuade him from telling the whole story as he wants to tell it." Thus, even if this testimony had been presented at the hearing, it could not have altered the court's determination.

In sum, an examination of the "totality of the circumstances" surrounding petitioner's confession does not support his position and makes this an inappropriate case for the exercise of certiorari jurisdiction.

Conclusion

The petition for certiorari should be denied.

Respectfully submitted,

DENIS DILLON
District Attorney, Nassau County
Attorney for Respondent
262 Old Country Road
Mineola, New York 11501
(516) 535-4800

ANTHONY J. GIRESE
JUDITH R. STERNBERG
Assistant District Attorneys
Of Counsel

July, 1980